TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 473

THE UNITED STATES OF AMERICA, PETITIONER

vs.

REGINALD P. WITTEK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 21, 1948
CERTIORARI GRANTED MARCH 14, 1949

SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES OF AMERICA, PETITIONER,

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INDEX

1 Municipal Court for the District of Columbia, Civil Division, Landlord and Tenant Branch, 500 Fourth Street N. W., First Floor, Washington, D. C.

No. L. & T. 120, 124

UNITED STATES OF AMERICA, PLAINTIFF

vs.

REGINALD P. WITTEK, 5 QUADRANT GREEN, S. W., DEFENDANT

Complaint for Possession of Real Estate

District of Columbia, ss:

Floyd L. France, acting under authority of the Attorney General and at the request of the Executive Officer of the National Capital Housing Authority being first duly sworn, states that plaintiff is entitled to the possession of premises No. 5 Quadrant Green, S. W., located in the District of Columbia, which the defendant holds without right. The premises are in possession of the defendant, who holds them as a month to month tenant of the plaintiff.

The ground or grounds upon which possession is sought are:

Defendant's default in the payment of rent, there being now due rent in the sum of $— for the period from

That possession is sought under Section 5 of the District of Columbia Emergency Rent Act by reason of the following: (Explain fully).

The tenancy has been terminated by notice to quit served upon the defendant as required by Title 45, section 902 of the District of Columbia Code.

Affiant also states: (Check one of the following)

That a notice to quit has been served upon the defendant as required by law;

That service of a notice to quit has been specifically waived in writing.

2 Affiant therefore says that plaintiff is entitled to judgment for possession of said property (and judgment in the sum of $— for rent in arrears) and costs of this suit.

(S) FLOYD F. FRANCE,
Plaintiff,
Attorney, Room 2138,
Department of Justice, Wash., D. C.

Subscribed and sworn to before me this 12th day of April, 1946.

(S) EMILY McC. IRELAND,
Notary Public, D. C.

In the Municipal Court of the District of Columbia

Motion to Dismiss for Failure to State a Cause of Action

Comes now the defendant by his attorney, Ward B. McCarthy, and moves to Dismiss the Complaint for possession of Real Estate filed herein, for failure to state a cause of action upon which possession may be granted by this Court. For grounds of this motion, defendant says:

1. The Complaint fails to state a ground for possession of housing accommodations within the meaning of Title 45, Section 1605, District of Columbia Code 1940.

2. For such other grounds as may be presented to the Court at the time of the hearing of this motion.

(S) WARD B. McCARTHY,
Attorney for Defendant,
1005 Investment Building,
Washington, D. C.

3 In the Municipal Court of the District of Columbia

Order Dismissing Complaint—April 29, 1946

Comes now the defendants and, by their attorney of record, in open Court move that cases #120,124; 120,126; 121,041 be consolidated for trial, said oral motion being hereby granted.

Further, the defendants by their attorney of record moves the Court to Dismiss the Complaint for possession of Real Estate for failure to state a cause of action upon which possession may be granted, the same being hereby granted.

4 The Municipal Court of Appeals for the District of Columbia

No. 411

UNITED STATES OF AMERICA, APPELLANT,

v.

REGINALD P. WITTEK, APPELLEE

No. 412

UNITED STATES OF AMERICA, APPELLANT,

v.

MYRON G. PURSEL, APPELLEE

No. 413

UNITED STATES OF AMERICA, APPELLANT,

v.

FRANCIS C. WRIGHT, APPELLEE

No. 414

UNITED STATES OF AMERICA, APPELLANT,

v.

EUGENE R. ISNER, APPELLEE

No. 415

UNITED STATES OF AMERICA, APPELLANT,

v.

JAMES E. SKELTON, APPELLEE

Appeals from the Municipal Court for the District of Columbia, Civil Division

Opinion—September 12, 1946

Argued August 19, 1946

Floyd L. France, for appellant.
Ward B. McCarthy, for appellees.

Before Cayton, Chief Judge, and Hood and Clagett, Associate Judges.

CLAGETT, *Associate judge:*

5 The principal question urged on these appeals is whether the District of Columbia Emergency Rent Act [1] applies to housing accommodations in the District of Columbia owned

[1] Code 1940, 45-1601 et seq.

by the United States and administered by the National Capital Housing Authority. A secondary procedural question relates to the form of the complaints.

Each of the five suits was filed in the name of the United States of America in the Landlord and Tenant Branch of the Municipal Court. Each was against a separate defendant and was brought to recover possession of separate premises described by street addresses in the southwestern section of the city. In each case the verification required by the rules of the trial court was executed by an attorney "acting under authority of the Attorney General and at the request of the Executive Officer of the National Housing Authority." The form of complaint required by Landlord and Tenant Rule 13 of the trial court specifies that the ground or grounds upon which possession is sought shall be stated and for convenience sets up two general possible grounds, first, the non-payment of rent and, second, the various grounds contained under Section 5(b) of the Rent Act. In these complaints the portion of the form relating to the Rent Act was x'd out, and there was inserted the following: "The tenancy has been terminated by notice to quit served upon the defendant as required by Title 45, section 902, of the District of Columbia Code."[2] This was all the information contained in the complaints.

Each of the defendants filed a motion to dismiss upon the sole ground that the District of Columbia Emergency Rent Act covers all housing in the District of Columbia, including housing owned by the United States, and consequently that the complaints failed to state a cause of action because they did not allege any of the grounds for possession specified in Section 5(b) of the Rent Act.[3]

Plaintiff contended that housing accommodations in the
6 District of Columbia owned by the United States and administered by the National Capital Housing Authority are not subject to the provisions of the local Rent Act. The trial court held the property was subject to the local Act and dismissed the complaints. From the orders of dismissal the United States appeals.

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[2] Under this section a tenancy from month to month, such as these tenancies are alleged to be, may be terminated by thirty days' notice in writing from the landlord to the tenant to quit, to expire on the day of the month from which such tenancy commenced.

[3] Section 5(b) provides that "no action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled," unless one of certain enumerated facts exists. Included in such facts are that the tenant

Aside from the merits of the case, we believe that the motions to dismiss should have been overruled under the familiar rule that a complaint is not subject to dismissal for failure to state a cause of action unless it appears certain that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of its claim.[4]

All the allegations of the complaints have been stated above. They do not show whether the premises were commercial or housing accommodations. If they were commercial premises, which admittedly are not subject to the Rent Act, the complaints stated a cause of action.

The tenants urge that the form of complaint specified in the Landlord and Tenant Rules of the trial court was not followed literally in that the complaints did not show the premises were exempt from the local Rent Act. Such exactness of pleadings, however, is not required, particularly in Landlord and Tenant Court where informality of pleadings has always been the rule. *De Bobula* v. *Coppedge*, D. C. Mun. App., 40 A. 2d 255, 73 W.L.R. 7. Moreover, L. & T. Rule 4(c), which is applicable here, provides that "all pleadings shall be so construed as to do substantial justice."

Furthermore, even if these premises are housing accommodations and even if they are governed by the District of Columbia Emergency Rent Act, it is still possible that the United States could have stated a cause of action by alleging, for example, that the tenants had violated a condition of their tenancy. Under such circumstances, if the complaint does not state a case quite plainly enough but it appears that the plaintiff has a cause of action, the proper procedure is to grant the motion to dismiss with leave to amend. It is true that the record here does not show that plaintiff requested leave to amend, and we can not assume that the trial court would have denied such right had it been sought.[5] However, even
7 when appellate courts have held that a complaint stated a cause of action and have reversed trial courts for contrary decisions, the appellate courts have sometimes suggested that leave to amend be granted for the purpose of making the complaint more definite and certain.[6] The purpose of lawsuits should not be to

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has violated a condition of his tenancy, has committed a nuisance, or used the accommodations for an immoral or illegal purpose or for other than living or dwelling purposes.

[4] *Tahir Erk* v. *Glenn L. Martin Co.*, 4 Cir., 116 F. 2d 865; *Leimer* v. *State Mut. Life Assur. Co.*, 8 Cir., 108 F. 2d 302.

[5] *Johnson* v. *M. J. Uline Company, Inc.*, D. C. Mun. App., 40 A. 2d 260, 73 W. L. R. 18.

[6] *Louisiana Farmers' Protective Union* v. *Great A. & P. Tea Co.*, 8 Cir., 131 F. 2d 419; *Tahir Erk* v. *Glenn L. Martin Co.*, *supra*.

test technicalities of pleadings but to arrive at the just settlement of legal disputes.

In oral argument and briefs here on appeal, the parties have stated or assumed various facts regarding the tenancy of the defendants, the reason for the service of the notices to quit, and the statutes under which the premises in question were constructed and are now being operated.

For example, the Government states these premises are a part of "Bellevue Houses" and were erected by the Navy Department under the authority of the Second Supplemental National Defense Appropriation Act for 1941, 54 State. 872, 883. We are entitled to judicially notice the provisions of that Act, one of which is that houses built under its authority are to be rented only to Army and Navy Personnel, to field employees of Military and Naval establishments, etc. Obviously, whether these houses were so constructed has an important bearing on the case. Were they so constructed? The record is silent, and we know of no published document answering the inquiry.

Furthermore, both parties have argued the effect to be given to certain provision of the Lanham Act of 1940, 54 Stat. 1125, 42 U. S. C. A. §.1521 et seq., as amended January 21, 1942, 56 Stat. 11, but neither has mentioned Section 2 of the amendment, providing "That any proceedings for the recovery of possession of any property or project developed or constructed under this title shall be brought by the Administrator in the courts of the States having jurisdiction of such causes and the laws of the States shall be applicable thereto." Were these houses developed or constructed under this Act? Again the record is silent, and we know of no published document answering the inquiry.

Obviously the trial court took at least some of these facts into consideration in arriving at its decision, but none of them were properly before it on the motions to dismiss. The court may
8 judicially notice federal and local statutes, but not facts necessary to determine whether they are applicable.[7] No rule is more explicit or more generally approved than that on a motion to dismiss only facts alleged in the complaint, or which the court is entitled to judicially notice, may be considered.[8] The aptness of the rule is illustrated by the instant case. In our weighing of the various points raised by both parties on the merits, we have constantly been faced with the problem that we could not decide such points without taking into consideration alleged facts not in the record and which we are not entitled to judicially notice. We

[7] *Lasby* v. *Burgess*, 76 Mont. 452, 248 Pac. 190.

[8] *Cohen* v. *United States*, 8 Cir., 129 F. 2d 733.

have concluded, therefore, that the case must be returned to the trial court so that a proper record may be prepared, either by an amended complaint, by an answer, by a trial, or by two or more of those procedures.

Reversed and remanded for further proceedings in accordance with this opinion.

9 In the Municipal Court of the District of Columbia

Motion for Leave to File Amended Complaint for Possession of Real Estate

Now comes the United States of America, plaintiff in the above-entitled cause, and moves this court for leave to file an amended complaint, a copy of which is hereto attached.

The complaint has been amended by adding thereto paragraphs numbered II and III, and by adding to paragraph IV "February 28, 1946".

(S) FLOYD L. FRANCE,
Attorney for Plaintiff,
Room 2138,
Department of Justice,
Washington, D. C.

In the Municipal Court of the District of Columbia

Opposition to Motion for Leave to File Amended Complaint for Possession of Real Estate

The defendant opposes the granting of the motion upon the following grounds:

1. The proposed amended complaint is contrary to the form of action prescribed by L & T Rule 13.

2. The last paragraph of Paragraph III should be stricken as being a conclusion of law.

3. The proposed amended complaint for recovery of defense housing shows on its face from the facts alleged and the Acts of Congress and the Executive Order cited, that the proposed amended complaint should be brought either in the name of the National Housing Administrator or his managing agent, the Executive Officer of the National Capital Housing Authority.

4. Such other grounds as will be called to the attention of the Court at the time of the hearing of this motion.

(S) WARD B. MCCARTHY,
Attorney for Defendant,
Investment Building,
Washington, D. C.

10 In the Municipal Court of the District of Columbia

Amended Complaint for Possession of Real Estate

District of Columbia, ss:

I

Floyd L. France, acting under authority of the Attorney General and at the request of the Executive Officer of the National Capital Housing Authority, being first duly sworn, states that plaintiff is entitled to the possession of premises No. 5, Quadrant Green, S. W., located in the District of Columbia, which the defendant holds without right. The premises are in possession of the defendant, who holds them as a month to month tenant of the plaintiff.

II

The property as 5 Quadrant Green, S. W., is a housing unit in the defense housing project known as "Bellevue Houses" which is owned by the United States and was constructed by the Navy Department under authority of section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 883. Under authority of section 201 of the Second Supplemental National Defense Appropriation Act, 1941, section 7 of the Lanham Act of October 14, 1940, 54 Stat. 1125, 42 U.S.C., sec. 1544, and Executive Order no. 9070, Fed. Reg. Vol. 7, p. 1529, the management and administration of the Bellevue Houses were transferred by the Navy Department to the National Housing Administrator. The authority of the National Housing Administrator to operate and manage the Bellevue Houses was by lease delegated to the National Capital Housing Authority in accordance with section 201 of the Second Supplemental National Defense Appropriation Act, 1941, the Lanham Act of October 14, 1940, 54 Stat. 1125, 52 U.S.C., sec. 1521, et seq., as amended by the Act of January 21, 1942, 56 Stat. 11 and section 5 of the Act of June 28, 1941, 55 Stat. 361.

11 III

The defendant entered into possession of 5 Quadrant Green, S. W., during August 1946, upon the payment of a monthly rental of $38.20. Thereafter, the rent was increased to $43.00 per month by administrative determination of the National Capital Housing Authority in accordance with section 201 of the Second Supplemental National Defense Appropriations Act, 1941, and section 7 of the Lanham Act of October 14, 1940, 54 Stat. 1125, 42 U.S.C., sec. 1544, as amended by the Act of January 21, 1942, 55 Stat. 361. The defendant was requested to execute a new lease requiring a rent of $43.00 per month and to pay rent at the rate of $43.00 per month,

beginning February 1, 1946. The defendant has refused and continues to refuse to execute a new lease and to pay rent at the rate of $43.00 per month. As a result, a thirty-day notice was served upon the defendant February 28, 1946, terminating his tenancy.

The plaintiff further alleges that the increase in rent was made in accordance with the authorities cited without reference to the provisions of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, Title 45, D. C. Code, secs. 1601 and 1611.

IV

The ground upon which possession is sought is that the tenancy has been terminated by notice to quit served upon the defendant February 28, 1946, as required by Title 45, section 902, of the Code of the District of Columbia.

V

Affiant therefore says that plaintiff is entitled to judgment for possession of said property and costs of this suit.

(S) FLOYD L. FRANCE,
Attorney for Plaintiff,
Room 2168, Department of Justice,
Washington, D. C.

12 In the Municipal Court of the District of Columbia

Motion to Dismiss Amended Complaint for Possession of Housing Accommodations

Comes now the defendant, by his attorney, Ward B. McCarthy, and moves the Court to dismiss the Amended Complaint for Possession of Defense Housing Accommodations. For Grounds for this motion, he says:

1. The amended complaint is contrary to the form of action preseribed by L&T Rule 13.

2. The amended Complaint for the recovery of possession of "defense housing" shows on its fact from the facts aileged and the Acts of Congress and the Executive Order cited, that the action should be brought in the name of the National Housing Administrator or his managing agent, the Executive Officer of the National Capitol Housing Authority.

3. And such other and further grounds as may be called to the attention of the Court at the time of the hearing of this motion.

(S) WARD B. MCCARTHY,
Investment Building,
Washington, D. C.,
Attorney for Defendant.

In the Municipal Court of the District of Columbia

Judge Scott

Order Overruling Motion to Dismiss—October 17, 1946

Defendant's motion to dismiss amended complaint for possession of housing accommodations overruled.

Time within which to demand jury trial extended to October 31, 1946.

13 In the Municipal Court of the District of Columbia

Answer of Defendants

First Defense

The alleged plaintiff is not the proper party plaintiff and is not a landlord within the meaning of that term for the purposes of jurisdiction of this Court.

Second Defense

The proper party plaintiff is either the National Housing Administrator or his managing agent, the National Capital Housing Authority.

Third Defense

The complaints fail to state a cause of action for recovery of housing accommodations, maintainable in this Court.

Fourth Defense

The complaints fail to state a cause of action for recovery of housing accommodations, upon which this Court may give judgments for possession.

Fifth Defense

The form of complaint is contrary to the form of action prescribed by L. & T. Rule 13.

Sixth Defense

The complaint fails to state a claim against the defendants upon which relief can be granted.

Seventh Defense

The defendants deny they hold the premises as a month to month tenant of the plaintiff.

Eighth Defense

The defendants aver that the plaintiff does not in good faith seek to recover possession of said premises.

Ninth Defense

The defendants aver that the plaintiff is not entitled to said premises under the District of Columbia Emergency Rent Act or otherwise.

14 *Tenth Defense*

The defendants aver that there is no privity of landlord and tenant between them and the plaintiff herein.

Eleventh Defense

The defendants aver that the actions herein are contrary to the express intent of the Congress in creating the Rent Act, is contrary to the purposes of the Act and is in evasion thereof.

Twelfth Defense

The defendants deny that a notice to quit has been served upon them as required by law.

Thirteenth Defense

The defendants deny that the increases in rent are in accordance with the statutes cited by plaintiff.

Fourteenth Defense

The defendants aver that they are persons intended to be protected in their tenancies by the provisions of the statutes cited by plaintiff in paragraphs II, III, and IV of the complaint.

Fifteenth Defense

The defendants deny that any lawful rent is due or unpaid or that they have refused to pay the lawful rent for the premises involved.

Sixteenth Defense

The defendants aver that they are tenants within the meaning of such term as defined in the D. C. Emergency Rent Act and entitled to the protection therein afforded tenants.

Seventeenth Defense

The defendants aver that their landlord is a landlord within the meaning of that term as defined in the D. C. Emergency Rent Act and is subject to all of the restrictions, prohibitions and other requirements of said act.

15 *Eighteenth Defense*

Answering the complaint:

1. The defendant- admit they are in possession of the premises as tenants from month to month, but deny that they are tenants of the plaintiff or that the plaintiff is entitled to possession of the premises or that they hold the premises without right.

As to the remainder of the allegations, they are without sufficient information or knowledge to either admit or deny, and therefore demand strict proof thereof.

2. The defendants admit the properties in question are housing units in a defense housing project known as "Bellevue Houses".

As to the remainder of the allegations, they are without sufficient information or knowledge to either admit or deny and therefore demand strict proof thereof.

3. The defendant Wittek denies he entered — possession during August 1946 but says he entered into possession in August 1943 at a monthly rental of $38.00 per month. The other defendants admit that they entered into possession of the various premises on the dates and at the monthly rentals as alleged. However, the defendants Wittek, Pursel and Skelton aver that prior thereto they had entered into possession of other housing units of "Bellevue Houses" under written agreements with the Bureau of Yards and Docks, Navy Department.

The defendants admit that the National Capital Housing Authority increased the rentals as alleged, but say same was and is contrary to the terms of the District of Columbia Emergency Rent Act, was and is contrary to the purpose of said act, and was
16 and is in evasion thereof, and contrary to the provisions of the Emergency Price Control Act of 1942, as amended.

The defendants admit they were requested to execute new leases as alleged and that they refused to execute same. The defendants aver that they may not be compelled, under the Rent Act, to execute new leases, particularly where said leases attempt to change the obligations of their tenancies.

The defendants deny their tenancies have been terminated by a written notice as required by D. C. Code 1940, 45-902.

4. The defendant- deny their tenancies have been terminated by a written notice as required by D. C. Code 1940, 45-902.

5. The defendants deny that plaintiff is entitled to judgments for possession of said properties or the costs of this suit.

(S) WARD B. MCCARTHY,
Investment Building,
Washington, D. C.,
Attorney for Defendants.

In the Municipal Court of the District of Columbia

PRE-TRIAL PROCEEDINGS

Statement of Nature of Case:

Cases No. L&T 120, 124, 125, 126, 127, 121, 041 and 142, 195 have been consolidated for trial. They are all L&T actions to recover possession of the property in question upon notice to quit.

The Plaintiffs do not rely upon the Emergency Rent Control Act nor have they averred any ground set forth therein.

The Defendants contend that this Court is without jurisdiction to entertain the action by reason of the Emergency Rent Control Act.

Stipulations: By agreement of counsel for the respective parties, present in Court, it is ordered that the subsequent course of this action shall be governed by the following stipulations unless modified by the Court to prevent manifest injustice:

17 It is stipulated by and between the respective parties to these actions as follows:

1. That these actions are grounded upon notice to quit;

2. That the premises in question are housing accommodations in the District of Columbia;

3. That no breach of covenant is involved except in case No. 142,195;

4. That these houses were constructed by the Navy Dept. under authority of Sec. 201 of the 2nd Suppl. National Defense Appropriation Act, 1941, approved Sept. 9, 1940, 54 Stat. 872, 883 and that they were not constructed under the provisions of the Lanham Act, 1940;

5. That in 1941 the United States of America took title to the premises in controversy in these cases;

6. It is stipulated that the notices, dated February 25, 1946, and the notice dated June 26, 1946, from —. —. Adams to the respective

defendants may be received in evidence without formal proof. It is further stipulated that they were received personally by the defendants and counsel will endeavor to agree upon the date of service before trial.

7. It is stipulated between the parties to these actions that the photostat copy of lease between the United States of America and the National Capital Housing Authority, dated July 1, 1944, and amendment to lease between the United States of America and the Nat. Capital Housing Authority, dated March 30, 1945, may be received in evidence without formal proof.

8. That the Plaintiff stipulates in its case in chief no evidence will be offered relating to the increase in rent or proposed new lease mentioned in par. 3 of the Complaint.

Stipulation

It is hereby stipulated by and between the parties in the above entitled causes or action which have been consolidated for trial that these causes may be finally disposed of upon the amended
18 complaints, answers, interrogatories to the plaintiff, and the answers, pre-trial stipulation, and the following exhibits:

For the Plaintiff:

Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, being the notices served upon the defendants, including the stipulations endorsed thereon.

Plaintiff's Exhibit No. 7, being a certified copy of a letter dated February 14, 1945, of R. Moreell, Chief of the Bureau of Yards and Docks, Navy Department.

Plaintiff's Exhibit No. 8, being a certified copy of a letter dated March 9, 1945, of John B. Blandford, Jr., National Housing Administrator.

Plaintiff's Exhibit No. 9, being an indenture of lease between the United States of America, acting through the Federal Public Housing Authority, and the National Capital Housing Authority, dated July 1, 1944.

Plaintiff's Exhibit No. 10, being an amendment to indenture of lease between the United States of America, acting through the National Capital Housing Authority, dated March 30, 1945.

Plaintiff's Exhibit No. 11, being a certified copy of a letter dated October 14, 1944, of John B. Blandford, Jr., National Housing Administrator.

Plaintiff's Exhibit No. 12, being a certified copy of a letter dated March 21, 1942, of John B. Blandford, Jr., National Housing Administrator, together with the inclosure consisting of National Housing Agency General Order No. 1.

For the Defendants:

Defendants' Exhibit No. 1. A letter dated December 7, 1945, from John Ihlder, Executive Officer, National Capital Housing Authority, to the Honorable Jennings Randolph, Committee on the District of Columbia, House of Representatives, transmitting, an inclosure entitle-, "National Capital Housing Authority—Report to members of Congress on reasons for increase in charge per month for gas for space heating at Bellevue Houses, dated December 6, 1945.

19 Defendants' Exhibit No. 2. A letter of John Ihlder, Executive Officer, dated December 11, 1945, addressed to Oliver C. Winston, Federal Public Housing Authority, with an inclosure.

Defendants' Exhibit No. 3. Letter from John Ihlder, Executive Officer of the National Capital Housing Authority, dated January 30, 1946, addressed to Honorable John L. McMillan, Chairman, Committee on the District of Columbia, House of Representatives, transmitting as an inclusive a document entitled "National Capital Housing Authority, Supplementary Report to Members of Congress on reasons for increase in charge per month for gas for space heating at Bellevue Houses, dated January 30, 1946.

Defendants' Exhibit No. 4, House of Representatives Report No. 1457, on H. R. 6128, which became Public Law 409 of the 77th Congress, approved January 21, 1942.

Defendants' Exhibit No. 5. Senate Report 918 on House Bill 6128, which became Public Law 409 of the 77th Congress, approved January 21, 1942.

The defendant- ask for special findings in their favor upon the following grounds:

1. Exclusive jurisdiction of all actions or suits of a civil nature at common law or in equity in which the United States of America shall be plaintiffs or complainants, is vested in the United States District Court for the District of Columbia under D. C. Code 1940, Title II, Section 306..

2. For the purpose of jurisdiction of this Court, under the pleadings and evidence, the United States of America is not the "landlord" within the meaning of that term.

3. The form of complaints *are* contrary to the Landlord and Tenant form of complaint prescribed by Landlord and Tenant Rule 13.

4. This Court has no jurisdiction to maintain these actions, the 30-days' written notice to quit being invalid because the authority of the signing agent to bind the plaintiff is not apparent on the face of the notice.

20 The defendants do not deny that W. W. Adams, who signed the notices to quit, Plaintiff's Exhibits 1 to 6, inclusive, was

an employee of the National Capital Housing Authority, nor do they question that Adams was instructed by his superior officers of the National Capital Housing Authority to give such notices, but reserve all other rights to object on the grounds stated above.

5. This Court has no jurisdiction to maintain these actions, the alleged 30-days' notice in writing on its face shows that Adams, the Project Manager, was giving notice on behalf of the National Capital Housing Authority, and not as agent for the alleged plaintiff.

6. This Court has no jurisdiction to maintain these actions, because the authority of the agent signing the 30-day written notice to quit, to bind the plaintiff has not been established.

7. This Court is without jurisdiction to either maintain these actions or grant judgment for possession of these properties because the plaintiff has alleged and proved:

(1) That a relationship of landlord and tenant from month to month exists for housing accommodations in the District of Columbia within the meaning of those terms in D. C. Code, 1940, Title 45-1611.

(2) That the tenants are not in arrears of rent, and are not violating any obligations of their tenancies.

(3) That the plaintiff has neither alleged nor proved any of the grounds for the recovery of possession of housing accommodations prescribed by D. C. Code, 1940, Title 45-1605.

8. The Court is without jurisdiction to either maintain these actions or to grant judgment for the recovery of the possession of these premises, because these properties are "Defense Housing" and acts of Congress, and Executive Order 9070 require all actions for the recovery of Defense Housing to be brought by the National Housing Agency, or its component branches in a court in this city having jurisdiction under the generally applicable laws for the recovery of housing accommodations. Therefore, the D. C. Code, 1940, Title 45-1605 requires that they be dismissed on the allegations of proof offered in support thereof.

21 ✓ It is further stipulated by and between the parties that the non-payment of rent by the defendant in Case No. 142, 195 shall not be considered at this time, but that the rights of the parties to have the non-payment of rent considered by the Court are not waived.

It is hereby further stipulated by and between counsel for the respective parties that the foregoing stipulation and exhibits constitute the facts involved in the instant case, and request is hereby

made of the Presiding Judge to consider this stipulation, together with the applicable law, as the basis for a final decision in this case.

Signed, this sixth day of December, A. D., 1946.

(S) FLOYD L. FRANCE,
For the Plaintiff;
(S) WARD B. MCCARTHY,
For the Defendants.

Plaintiff's Exhibit No. 3

National Capital Housing Authority
Washington, D. C.

February 25, 1946.

Mr. Reginald P. Wittek
5 Quadrant Green, S. W.
Washington, D. C.

DEAR MR. WITTEK:

Notice is hereby given you of the termination of your tenancy of 5 Quadrant Green, S. W. in the Bellevue Housing Project on Monday, the first day of April, 1946.

Accordingly, this thirty day notice is served upon you in accordance with law for the termination of your rent agreement with the Government and you are notified to quit the premises
22 on or before the 1st of April, 1946.

Very truly yours,

W. W. ADAMS,
Property Manager.

Plaintiff's Exhibit No. 7

In reply address Bureau of Yards and Docks and refer to No. ND17/N4-1 F4-3/jrt.

NAVY DEPARTMENT
Bureau of Yards and Docks
Washington, D. C.

February 14, 1945.

Mr. Philip M. Klutznick, Commissioner
Federal Public Housing Authority
Longfellow Building, Room 1115
Connecticut Avenue and M Street, N. W.
Washington, D. C.

MY DEAR MR. COMMISSIONER:

Pursuant to Presidential Executive Order No. 9070 of 24 February 1942 and the National Housing Agency Administrator's letter

of 21 March 1942, jurisdiction of the low-cost housing project no. DC-49011 consisting of 600 units at Bellevue, Washington, D. C., was transferred to Schedule II to be managed and operated by the Navy Department for the National Housing Agency until such time as the Administrator may otherwise determine. Thereafter, by the Administrator's letter dated October 24, 1944, and in accordance with the Navy Department's request, this project was transferred from Schedule II to Schedule III, effective 1 July 1944. This latter transfer gave the Navy Department complete jurisdiction over this project.

The intervention of certain factors not in existence at the time of the Department's earlier determination that this project would be of permanent value to the Navy Department has resulted in the present determination that the project will not be of permanent value to the Navy Department.

In view of the foregoing, the Federal Public Housing Authority is requested to accept a re-transfer of jurisdiction of this "off-reservation" housing project. Such a retransfer of jurisdiction contemplates that the Federal Public Housing Authority would have complete control of the management and operation of the project.

Sincerely yours,

(S) R. MOREELL,

April 19, 1946.

Pursuant to Title 28, USC, Section 661, I certify this to be a true copy from the records of the Federal Public Housing Authority.

(S) RUTH E. BERMAN,
Attesting Officer.

23 *Plaintiff's Exhibit No. 8*

March 9, 1945.

MY DEAR MR. SECRETARY:

This is with reference to the letter of February 14 from Admiral Moreell of your Department to the Commissioner of the Federal Public Housing Authority, with reference to the retransfer of jurisdiction to the National Housing Agency of 600 housing units in the project designated as DC-49011. As stated in that letter, jurisdiction over this project was transferred to the Navy Department by letter dated March 21, 1942, upon your Department's determination that the project would be of permanent value to the Navy Department.

Notice is taken of the finding of your Department of the existence of certain factors at this time which indicates now that the project would not be of permanent value to your Department

and you request that we accept a retransfer of jurisdiction. This letter will serve as the acceptance of jurisdiction of said project pursuant to the terms of Public Law 849, 76th Congress, and will confirm our understanding that actual physical management of the project will be assumed by this Agency on April 1, 1945.

Sincerely yours,

JOHN B. BLANDFORD, JR.,
Administrator.

Apr. 19, 1946.
The Honorable The Secretary of Navy
Certified true copy:
Attested:

(S) JOHN M. FRANTZ,
Director, Administrative Services Division (Acting).

24 *Plaintiff's Exhibit No. 9*

Indenture of Lease between United States of America, acting through the Federal Public Housing Authority (hereinafter called the "Lessor") and the National Capital Housing Authority (hereinafter called the "Lessee")

Whereas, the Lessor is the owner of certain housing projects situated in the City of Washington, District of Columbia (hereinafter called the District), and in Montgomery County and Prince George's County, State of Maryland, designated as:

Project No. DC-49012, Stoddert Dwellings, District of Columbia.
Project No. DC-49016, Knox Hill Dwellings, District of Columbia.
Project No. DC-49017, Highland Dwellings, District of Columbia.
Project No. DC-49036, Syphax Houses, District of Columbia.
Project No. DC-49037, Benning Road Houses, District of Columbia.
Project No. DC-49038, 35th Street Houses, District of Columbia.
Project No. DC-49039, Foote Street Houses, District of Columbia.
Project No. DC-49040, Monroe Street Houses, District of Columbia.
Project No. DC-49044, 21st Street Houses, District of Columbia.
Project No. DC-49053, Bryant Street Houses, District of Columbia.
Project No. DC-49054, Lily Ponds Houses, District of Columbia.
Project No. DC-49055, Anthony Bowen Houses, District of Columbia.
Project No. DC-49059, Canal Street Houses, District of Columbia.
Project No. DC-49060, Georgia Avenue Houses, District of Columbia.

Project No. DC-49061, Tunlaw Road Houses, District of Columbia.

Project No. DC-49062, O'Brien Court Houses, District of Columbia.

Project No. DC-49063, Nichols Avenue Houses, District of Columbia.

Project No. DC-49065, 25th Street Houses, District of Columbia.

Project No. MD-18083, Carry Houses, Prince George's County, Md.

Project No. MD-18085, Fairway Houses, Montgomery County, Md.

Project No. MD-18211, Calvert Houses, Prince George's County, Md.

(which, as hereinafter in paragraph 1 described, is called the "Project" or the "demised premises") and desires to lease the Projects to the Lessee:

Now, therefore, this indenture of lease witnesseth:

Premises Leased

1. That the Lessor, in consideration of the premises, of the rents hereinafter reserved, and of the covenants, agreements and the terms herein contained on the part of the Lessee to be paid, kept and performed, has granted, demised and leased and by these presents doth grant, demise and lease to the Lessee, and the
25 Lessee hereby takes and hires the demised premises, consisting of the sites of the housing projects designated and officially recorded as Projects Nos. DC-49012, 49016, 49017, 49036, 49037, 49038, 49039, 49040, 49044, 49053, 49054, 49055, 49059, 49060, 49061, 49062, 49063, 49065, MB-18083, 18085 and 18211, by the Lessor, together with (i) the buildings and structures erected thereon or in the course of completion thereon by the Lessor, consisting generally of the numbers of buildings containing the numbers of dwelling units as set out in the following table:

Project No.	Number of Buildings	Number of Dwelling Units
DC-49012	86	200
DC-49016	81	250
DC-49017	91	350
DC-49036	20	146
DC-49037	69	138
DC-49038	13	75
DC-49039	29	168
DC-49040	17	90
DC-49044	6	36
DC-49053	5	32

Project, No.	Number of Buildings	Number of Dwelling Units
DC-49054	95	492
DC-49053	16	86
DC-49059	5	20
DC-49060	36	170
DC-49061	12	92
DC-49062	3	36
DC-49063	19	164
DC-49065	5	40
MD-18083	110	315
MD-18085	238	238
MD-18211	100	500

and (ii) all buildings, equipment, fixtures, appurtenances and supplies installed in or located in or located on the site of the Project at the Commencement date of this Lease or as may be thereafter installed or located thereon by the Lessor in the course of completion of said buildings and structures not heretofore completed; to have and to hold the demised premises with the appurtenances thereunto belonging for and during the term
26 commencing on a date to be specified by the Lessor in a written notice from the Lessor to the Lessee (such date being hereinafter called the "Commencement Date") and terminating on June 30, 1945, (hereinafter called the "Termination Date") unless the term is extended pursuant to the provisions of Paragraph 25 or unless sooner terminated in accordance with any other provisions of this Lease.

Fixed and Quarterly Rents

2. The Lessee, for and in consideration of said demise, agrees to pay to the Lessor (i) a fixed rent of Ten Dollars ($10.00) for the entire term of this Lease including any extension thereof pursuant to Paragraph 25 of this Lease and (ii) quarterly, on the 15th day of April, July, October and January of each year of the term of this Lease (including the fractional part, if any, of the initial quarterly period of the Lease term) and any extension thereof, or upon the sooner termination of this Lease in accordance with its provisions, a sum of money determined in the following manner: An amount equal to the difference between (a) the total expenses of the Lessee incurred in the operation of the Project for the immediately preceding quarterly period (including in the expenses for the initial quarterly or fractional quarterly period the said fixed rent heretofore paid) and (b) the total income of the Lessee, derived from the operation of the Project (each such amount being hereinafter referred to as "Quarterly Rent").

Budgets

3. The Project shall be operated by the Lessee in accordance with a budget approved by the Lessor. The Lessee shall, insofar as such action has not already been taken by the Lessor, submit to the Lessor a proposed budget of the management, operation, maintenance and administration expenses of the Project for the initial term of this Lease, and thereafter shall submit to the Lessor for its approval at least sixty (60) days before the commencement of each succeeding extended term, a budget for its approval on forms furnished by the Lessor.

27 Payments in Lieu of Taxes

4. Payments in lieu of taxes will be made by the Lessee, provided that prior to making any such payments there shall be submitted to the Lessor the amount of the proposed payment together with the computations, showing the value of the property upon which the tax is based, and any deductions that have been made because of expenditures by the Government for streets, utilities, or other public services, and provided further, no payment will be made by the Lessee until the amount of such payment is approved by the Lessor. The amounts of such payments shall be charged to the operating expenses of the Project.

Operation of Project

5. The Lessee shall provide all personnel, supplies and services necessary to properly manage, operate, maintain and administer the Project in accordance with the approved budget for each year; shall select occupants for the dwellings and other facilities of the Project and permit them to continue in occupancy only in strict accordance with approved standards for initial selection and continued occupancy and such further regulations as prescribed by the Lessee with the approval of the Lessor; and shall charge and collect rentals from occupants in accordance with approved schedules and rentals. The Lessee agrees that the personnel engaged in the management and operation of the Project shall be appointed in accordance with the rules and regulations of the United States Civil Service Commission in that all of the employees of the Lessee are subject to the Classification Act of 1923, as amended. No provision of this Lease shall be construed as depriving the State or any political subdivision thereof of its civil and criminal jurisdiction in and over the demised premises, or impair or alter the civil rights and duties of the Lessee under State or Local law.

28 Advances by the Lessor: Losses

6. The Lessor agrees to advance to the Lessee such funds as it deems necessary to provide working capital, or to cover anticipated deficits and expenses incurred by the Lessee if at any time during the term of this lease, or any extension thereof, Project revenues are not sufficient to defray the cost of managing, administering and operating the Project, in accordance with the approved current Operating Budget, or because of unanticipated extraordinary expenses approved by the Lessor. Such advances shall be deposited immediately in the Administration Fund and disbursed by the Lessee for the same purpose and in the same manner as the revenues and income from rentals and other sources, except as may be specifically authorized by the Lessor. Upon demand or within six (6) months from date of said advance, whichever occurs first, the whole or any such portion of said advances which, in the determination of the Lessor, are no longer necessary to defray said costs, shall be returned to the Lessor by the Lessee. The Lessor agrees to pay any losses incurred by the Lessee in the operation, administration, or management of the Project which result from compliance by the Lessee with the standards or requirements established by the Lessor for the operation, administration, or management of the Project in accordance with the provisions of this Lease and which the Lessor shall determine are true losses.

Revenues and Expenditures

7. The Lessee shall deposit all revenues derived from the management and operation of the Project (including, if any, rentals, from initial occupancy and before completion of the Project) in the Treasury of the United States. Withdrawals shall be made
29 in accordance with prescribed accounting procedure and to pay only proper expenses incurred in the management, operation, maintenance, and administration of the Project in accordance with the approved budget for the then fiscal year; *provided* that the Lessee may maintain a petty cash fund of not to exceed $1500 for all properties hereinbefore designated.

Accounts and Inspection

8. The Lessee shall at all times during the term of this Lease keep and maintain complete books, records, journals, audits, accounts, minutes of any proceedings, and other data reasonably pertinent to its management, operation, maintenance, and administration of the Project, disclosing the full and detailed nature of all transactions of the Lessee related to its undertakings under this Lease according to an accounting system and forms prescribed by the Lessor. All such books, records, journals, audits, accounts,

minutes, and other data shall be open to the inspection of an authorized representative or representatives of the Lessor at all times during regular business hours.

Furniture, Fixtures, and Supplies

9. The Lessee shall be responsible and accountable for all furniture, fixtures, and supplies now on the Project premises and for all additional equipment and supplies acquired for use in connection with the management, operation, maintenance, and administration of the Project during the term of this Lease and any extension thereof and the Lessee shall account therefor to the Lessor at such times as it may require.

Maintenance and Repair

10. The Lessee shall at all times maintain the Project in good repair, order and condition, suitable to the purposes thereof, to the extent that funds for such maintenance are available from the income of the Project and within the budget as approved by the Lessor, provided, however, that the Lessee shall make no major or extraordinary repairs or improvements in the Project without prior written approval of the Lessor.

Bonds and Insurance

11. Each employee or agent of the Lessee whose duties include the receiving or disbursing of funds in connection with the Project shall furnish a bond in such form, substance, and amount and with such sureties as shall be approved by the Lessor. The Lessee shall obtain such insurance as is deemed necessary to the proper operation of the Project by the Lessor.

Surrender of Premises

12. The Lessee agrees upon the termination of this Lease, to quit and surrender the demised premises to the Lessor in as good repair, order and condition as when delivered by the Lessor, ordinary wear and tear and loss, if any, by fire, tornado, earthquake, or any other casualty excepted, and at that time to duly deliver, assign and transfer to the Lessor (i) all equipment, supplies, and all other assets (including accounts receivable) then constituting the Project, whether acquired before or after the Commencement Date, and (ii) the then balance of the allotment after deducting therefrom an amount equal to all undischarged and proper liabilities and obligations incurred by the Lessee in accordance with the provisions of this Lease with regard to the Project.

Liability

13. The Lessor shall not be liable for any losses and damages arising out of personal injuries, property damage or for loss of life or property resulting from, or in any way connected with, the character, condition, change in condition or use of the demised premises. The Lessee under this Lease is an independent contractor and all persons employed by the Lessee shall be the Lessee's employees, servants, and agents and not the employees, servants and agents of the Lessor.

Assignment

14. The Lessee shall neither assign, mortgage nor pledge this Lease or any interest therein without the prior written consent of the Lessor.

Partial or Total Destruction of Premises

15. In event the Project is hereafter wholly destroyed or rendered wholly unfit for its use under the terms of this Lease, by fire, tornado, earthquake, or any other casualty, then the period of
31 this Lease shall terminate as of the date of such casualty. In event the Project is hereafter partially destroyed or rendered partially unfit for its use under the terms of this Lease by fire, tornado, earthquake or any other casualty, then the parties hereto shall enter into such equitable arrangements as shall be mutually satisfactory with respect to continuation of the terms of this Lease to that portion of the demised premises not so destroyed or rendered partially unfit for use thereunder. If the parties hereto are unable to make such mutually satisfactory arrangements, then either party may thereupon terminate the Lease upon written notice to the other party. In event this Lease is terminated for any one of the reasons stated in this paragraph, there shall be a prompt accounting as of the date of termination and a settlement between the Lessor and the Lessee according to the terms of this Lease and particularly the provisions of Paragraph 13 hereof.

Defaults and Reentry

16. Anything in this Lease to the contrary notwithstanding, in the event of default by the Lessee in the payment of any rent when due or violation of any other provision of this Lease, or if the powers of the Lessee to operate, manage and maintain the Project in accordance with the provisions of this Lease are in any way curtailed or limited by law or otherwise, or if the Lessor deems it to be in the public interest (in order to further the war efforts of the Federal Government) to terminate this Lease; then, upon the happening of any one or more of said events, the Lessor may terminate this Lease and all rights of the Lessee hereunder, and thereupon the

Lessor, its representatives, agents, or assigns, shall have the right, without further demand or notice, to reenter and take possession of the demised premises. The Lessee for itself and any successors in interest by operation of law or otherwise, hereby waives
32 any and all notice and demand for possession and agrees that upon any such default, violation, appointment or event, the Lessor may immediately re-enter and fully recover the demised premises and dispossess the Lessee or any said successors in interest without legal notice or the institution of any legal proceedings whatsoever. No member or officer of the Lessee shall be individually liable on any obligation assumed by the Lessee hereunder.

Arbitration

17. In the event that a controversy between the Lessor and the Lessee arises as to the interpretation or application of any of the provisions of this Lease, the Lessee shall have the right to appeal from the decision of the Lessor in the manner hereinafter provided. The Lessee shall serve, within ten (10) days after receipt of the Lessor's decision, a written notice upon the Lessor setting forth the decision from which it elects to appeal and the time (which shall not be less than fifteen (15) days nor more than thirty (30) days from the time such notice is served) and the place for the hearing on such appeal, at which time and place the Lessee shall be given a full opportunity to be heard. The hearing on the appeal shall be held before a Board of Review, which shall consist of three members. The Lessor and the Lessee shall each select one member of the Board and the two members so selected shall select the third member. The Board shall proceed promptly to conduct a hearing on the appeal and shall make a written report to the Lessor and to the Lessee, containing its findings and recommendations (which shall not be binding on the Lessor) not later than sixty (60) days from the date such written notice was served upon the Lessor by the Lessee. The Lessor shall not take final action with respect to the matters on appeal until the expiration of fifteen (15) days after it has received the written report of the Board, except that if the Board fails to conduct a hearing or submit a report within the times specified herein, the Lessor's original decision shall become
33 final upon the expiration of eighty-five (85) days after the Lessor has first notified the Lessee of its decision in the matter. Notwithstanding anything in this paragraph to the contrary, the Lessor shall at all times be free to make any final determinations and take such final action as may be necessary upon default of the Lessee, pursuant to the provisions of Section 16 of this Lease.

Waiver

18. The failure of the Lessor to insist, in any one or more instances, upon a strict performance of any of the covenants hereof; or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment of such covenant or option in any other instance; but the same shall continue and remain in full force and effect. The Lessee agrees that the rights and remedies given to the Lessor in this Lease are distinct, separate and cumulative remedies and that no one of them whether or not exercised by the Lessor, shall be deemed to be in exclusion of any of the others.

Peaceful Possession

19. The Lessor covenants and agrees that upon payment of the rents at the times and in the amounts in this Lease provided and upon the performance of all of the other covenants and undertakings of the Lessee under this Lease, the Lessee shall hold and enjoy the demised premises free from disturbances by any act of the Lessor, its successors or assigns for the term of this Lease and for any extension thereof.

Executive Orders

20. This Lease shall be subject to all applicable regulations set forth in Title II of Executive Order No. 9001 of December 27 1941, as extended by Executive Order No. 9116 of March 30, 1942, which are hereby incorporated in and made a part of t is Lease by reference. The Lessee warrants that it has not employed any person to solicit or secure this Lease upon any agreement for
34 a commission, percentage, brokerage, or contingent fee. Breach of this covenant shall give the Lessor the right to annul this Lease.

Member of Congress

21. No member of or Delegate to Congress, or Resident Commissioner, shall be entitled to any share or part of this Lease or any benefit that may arise therefrom.

Other Persons

22. No member, officer, agent or employee of the Lessee shall have any interest, direct or indirect, in any contract for property, materials, or services made or furnished in connection with the performance of any of the Lessee's undertakings under this Lease.

Notice to Lessor

23. Any notice, request, demand or other communication required to be given by the terms of this Lease to the Lessor by the Lessee shall be given or addressed to the Director, General Field Office, Federal Public Housing Authority, Longfellow Building, Connecticut and Rhode Island Avenues, N. W., Washington, D. C., and shall be deemed sufficiently given if sent to him by registered mail, addressed as aforesaid and deposited in the United States mail in a sealed envelope with sufficient postage prepaid thereon.

Notice to Lessee

24. Any notice, request, demand, or other communication required to be given by the terms of this Lease to the Lessee by the Lessor shall be deemed sufficiently given if sent by registered mail to the Lessee at 1737 L Street, N. W., Washington, D. C., deposited in the United States mail in a sealed postage prepaid or franked envelope.

Extension of Term

25. The term of this Lease shall be automatically extended from time to time for consecutive periods of one year each from and after the Termination Date, unless terminated sooner in accordance with the provisions of this Lease and unless either party thereto shall, at least thirty (30) days prior to the Termination Date or at least thirty (30) days prior to the termination of the last extended term of one year, duly notify the other party in writing of its intention to terminate the Lease in whole or in part on the Termination Date or on the last day of the last extended term, as the case may be. All of the provisions of this Lease shall continue in full force and effect for any and every extended term thereof.

Utility Contracts

26. This Lease is subject to the terms and conditions of the following described utility contracts to which the United States of America, as owner of the development, is a party:

1. TPS-47812 Potomac Electric Power Company
2. TPS-36687 Washington Gas Light Company
3. TPS-47268 Chesapeake and Potomac Telephone Company

The Lessee shall assume and discharge the obligations of the Lessor and shall act as the representative of the Lessor in dealing with the suppliers of Utility Services under said contracts, and shall enforce all rights of the Lessor thereunder. The Lessee shall

be responsible for renegotiation, renewal, or cancellation of said contracts with the approval of the Lessor.

In Witness Whereof, the parties hereto have executed this Lease this 1st day of July, 1944.

NATIONAL CAPITAL HOUSING AUTHORITY,
By (S) JOHN IHLDER.

Attest:
(S) JAMES RING.

Attest:
(S) MARGARET D. RIDGLY.

THE UNITED STATES OF AMERICA,
By (S) OLIVER C. WINSTON,
For the Federal Public Housing Commissioner.

36 *Plaintiff's Exhibit No. 10*

Amendment No. 2. Contract No. HA(DC-49012)mph-1

Amendment to Indenture of Lease between United States of America, acting through the Federal Public Housing Authority (hereinafter called the "Lessor"). and the National Capital Housing Authority (hereinafter called the "Lessee")

This Agreement entered into this 30 day of March, 1945, by the Lessor, represented by the officer executing this Agreement, and the Lessee;

WHEREAS, the Lessor by Lease Agreement dated July 1, 1944, granted, demised, and leased to the Lessee, and the Lessee did thereby take and hire from the Lessor the premises herein described consisting of 21 war housing projects in the District of Columbia-Metropolitan Area and containing 3,638 family dwelling units; and

WHEREAS, by Agreement dated September 1, 1944, between the Lessor and the Lessee, said Lease No. HA(DC-49012)mph-1 was amended to include two additional war housing projects, designated as DC-49101 and DC-49104; and

WHEREAS, the Lessor has, subsequent to the execution of said Lease Agreement dated July 1, 1944, and the Amendment thereto dated September 1, 1944, acquired an additional project situate in the District of Columbia, designated as Project DC-49011 (Bellevue), containing 601 family dwelling units, maintenance and management buildings, and buildings used for commercial purposes; and

WHEREAS, the Lessor desires to demise and lease and the Lessor is willing to take and hire the Project designated as DC-49011 for a term beginning April 1, 1945, and ending June 30, 1945, subject to all the terms, covenants, and conditions of the Lease Agreement

dated July 1, 1944, and as amended by Agreement dated September 1, 1944;

Now, Therefore, Witnesseth That the Lessor and Lessee in consideration of their mutual promises agree that the certain Indenture of Lease No. HA(DC-49012)mph-1 dated July 1, 1944, and amended by their Agreement dated September 1, 1944, be and it hereby is further amended by adding to Paragraph One—Premises Leased—of said Indenture of Lease dated as of July 1, 1944, the following Project, to wit:

Bellevue, DC-49011, District of Columbia

The Lessor hereby transfers and assigns to the Lessee all of its rights, title and interest to and in all choses in action, contracts, including tenant and commercial leases, and insurance policies in effect and used in the operation of Bellevue, DC-49011, as of the date of this Agreement for the purpose of facilitating the orderly operation of said Project, DC-49011.

37 The Lessor and the Lessee mutually agree that said Project, DC-49011, is granted, demised, leased and hired subject to all of the terms, covenants, conditions and agreements contained in the Indenture of Lease dated July 1, 1944, identified as No. HA(DC-49012)mph-1, in addition to the above provisions.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above mentioned.

National Capital Housing Authority,
By (S) John Ihlder.

Attest:
(S) James Ring.

The United States of America,
By (S) Oliver C. Winston,
For the Federal Public Housing Commissioner.

Attest:

38 *Plaintiff's Exhibit No. 11*

National Housing Agency
Washington

October 14, 1944.

My Dear Mr. Secretary:

In accordance with your letter of July 4, 1944, requesting the transfer to the jurisdiction of the Navy Department of the housing projects listed below, and, in view of your determination that these projects are considered to be permanently useful to the Navy, I

hereby transfer these projects to the jurisdiction of the Navy Department.

Project No.	*Location*	*Number of Family Units*
V. I. -53011	St. Thomas, Virgin Islands	50
P. R. -52022	San Juan, Puerto Rico	400
D. C. -49011	Washington, D. C.	600

These projects were originally constructed by you under the authority of Public Act 781, and all title papers in connection with these projects are presently in the custody of the Navy Department. The effective date of this transfer of jurisdiction is July 1, 1944.

This transfer is being made pursuant to Public Law 849, 76th Congress, Third Session, as amended.

Sincerely yours,

(signed) JOHN B. BLANDFORD, JR.,
Administrator

The Honorable The Secretary of Navy

Certified True Copy
Attested:

(S) LEWIS E. WILLIAMS,
Director, Administrative Services Division.

Plaintiff's Exhibit No. 12

National Housing Agency
Washington

March 21, 1942.

The Honorable The Secretary of the Navy.

MY DEAR MR. SECRETARY:

Enclosed is a copy of Order No. 1 of the National Housing Agency providing for the transfer of activities in connection with certain defense housing projects listed therein.

39 I have delegated to Leon H. Keyserling, Acting Federal Public Housing Commissioner, the determination of the date on which it will be feasible to transfer the projects listed on Schedule I of the attached Order. May I suggest that you designate someone on your staff to work with the Acting Federal Public

Housing Commissioner in effectuating the transfers directed by the enclosed Order.

Sincerely yours,

JOHN B. BLANDFORD, JR.,
Administrator.

Enclosure

Certified True Copy
Attested:

(S) LEWIS E. WILLIAMS,
Director, Administrative Services Division.

Defendants Exhibit No. 1

National Capital Housing
Washington 25, D. C.

December 7, 1945:

Hon. Jennings Randolph,
Chairman, Committee on the District of Columbia,
House of Representatives,
Washington, D. C.

DEAR MR. RANDOLPH:

Several members of the House District Committee, as well as other members of both the Senate and House, have recently written or telephoned me in connection with NCHA's proposed increase in the total utility charge to tenants at Bellevue Houses for the use of gas for space heating. It is my understanding that the Bellevue Citizens Association has made a formal prolist to you relative to this proposed increase in utility charges.

For your information, the reasons for making this increase necessary at Bellevue property are set forth in the enclosed report dated December 6, 1945. It is proposed to make this increase effective as of February 1, 1946.

NCHA is very glad to have had the tenants at Bellevue bring these matters to your attention and would appreciate having any comments you care to make in connection with the enclosed report.

Respectfully,

(S) JOHN IHLDER,
Executive Officer.

40 National Capital Housing Authority

Report to Members of Congress on Reasons for Increase in Charge Per Month for Gas for Space Heating at Bellevue Houses

December 6, 1945.

"The Federal Public Housing Authority which holds title to the property, has concurred in this belief (See letter attached, dated August 30, 1945)"

Defendants' Exhibit No. 2

National Capital Housing Authority

December 11, 1945.

Mr. Oliver C. Winston,
Director, General Field Office,
Federal Public Housing Authority,
Longfellow Building,
Washington 25, D. C.

Re: Bellevue Houses, DC-49011

DEAR MR. WINSTON:

In as much as FPHA holds title to the property.

Very truly yours,

(S) JOHN IHLDER.

41 In the Municipal Court of the District of Columbia

Memorandum—April 18, 1947

These cases were remanded to this Court by the Municipal Court of Appeals for further proceedings in accordance with its opinion.

The actions were set for trial by jury but upon agreement between counsel the jury trial was waived and the case submitted to the Court upon the stipulation that "these causes may be finally disposed of upon the amended complaints, answers, interrogatories to the plaintiff, and the answers, pre-trial stipulation," and numerous other exhibits.

Plaintiff's position being substantially similar to its original claim, it is deemed advisable to consider the case in the light of defendants' request for special findings as set out in the stipulation.

1. Defendants' first contention has been more than amply answered by the Municipal Court of Appeals in its decision in the case of Ridgely vs. U. S., 45 A 2d 475, 73 W.L.R. 191. Further comment is un--cessary.

2. It has been stipulated that the houses in question "were constructed by the Navy Department under authority of Sec. 201 of the 2nd Suppl. National Defense Appropriations Act, approved September 9, 1940, 54 Stat. 872, 883, and that they were not constructed under the provisions of the Lanham Act, 1940." The maintenance of these actions is consequently not restricted by the latter Act, and the National Capital Housing Authority, being an instrument of the Federal Government, the United States is deemed the landlord and a proper plaintiff here.

3. The Municipal Court of Appeals has previously determined in this very action that "such exactness of pleadings is not required, particularly in Landlord & Tenant Court where informality of pleadings has always been the rule. DeBobula v. Coppedge, D. C. Mun. App. 40 A 2d 255. Moreover, Landlord and Tenant Rule 4(c), which is applicable here, provides that 'all pleadings shall 42 be so constructed as to do substantial justice.'"

4 & 5. Having determined that the United States of America is the landlord within the meaning of that term (32 above) and that the National Capital Housing Authority is the operative instrumentality thereof, it follows that the signing of the notices to quit here in question by an employee of National Capital Housing Authority was adequate.

6. "Where a notice in writing to quit is executed by an agent in behalf of his principal, the ordinary mode of indicating the agency in use in other written instruments should be employed. The general rule that the signature is sufficient if the relationship is unmistakably indicated holds true in regard to notices to quit." *Jones, L. & T., Sec. 265.*

Here the notices were signed by W. W. Adams, Property Manager, on letterheads of the National Capital Housing Authority. It follows from what has gone before that the had the authority for so doing.

7. Considered in the light of the circumstances peculiar to federally operated, subsidized housing projects, it is concluded that the District of Columbia Emergency Rent Act of December 2, 1941, D. C. Code, 1940, Tit. 45-1601-1611, is not applicable to the cases here in question.

8. It has been previously determined, No. 2 above, that the Lanham Act, 1940, is not applicable to this project, and it is concluded Executive Order 9070 in no way affects the maintenance of these actions.

Accordingly, a finding for the plaintiff will be entered as a matter of record on April 21, 1947.

Date: April 18, 1947.

(S) AUBREY B. FENNELL,
Judge.

43 IN THE MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA

JUDGMENT—April 21, 1947

JUDGE FENNELL

The Court has this day ordered that in each of the above-entitled causes, that a finding be, and it is hereby entered in favor of the plaintiff for possession.

44 THE MUNICIPAL COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA

No. 532

REGINALD P. WITTEK, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the Municipal Court for the District of Columbia, Civil Division

OPINION—September 10, 1947

Argued August 18, 1947

Ward B. McCarthy for appellant.
Floyd L. France for appellee.
Before CAYTON, Chief Judge, and HOOD and CLAGETT, Associate Judges.

CLAGETT, *Associate Judge:* This appeal involves the right of the United States Government acting through the National Capital Housing Authority to dispossess, without complying with the District of Columbia Emergency Rent Act, a tenant in a defense housing project known as "Bellevue Houses" located in southwest Washington. On a previous appeal from a judgment of the Landlord and Tenant branch of the Municipal Court dismissing the government's complaint we reversed upon the ground that the record was insufficient for us to pass upon the merits of the controversy. *United States* v. *Wittek*, 48 A. 2d 895; 74 W. L. R. 1151. The complaint having been amended and the deficiencies in the

previous record having been supplied by stipulation, the trial court gave judgment for possession in favor of the United States, and the tenant prosecutes this new appeal.

As amended the complaint named the United States of America as plaintiff and the tenant as defendant. It was filed by Floyd L. France, "acting under authority of the Attorney General and at the request of the Executive Officer of the National Capital
45 Housing Authority." In the complaint it was alleged that the premises were in the possession of the defendant as a month to month tenant of the plaintiff at a monthly rental of $38.20, that the rent had been increased to $43 a month by the National Capital Housing Authority and the defendant had been requested to execute a lease at the new rental but had refused to do so and that as a result a thirty days' notice to quit terminating the tenancy had been served upon defendant in accordance with District of Columbia law. None of the grounds for possession provided for by the District of Columbia Emergency Rent Act were alleged, the government claiming that the Rent Act did not apply to suits brought by the federal government for possession of government housing. The trial court upheld this position and also overruled several technical contentions of the tenant.

The issues on this appeal are best summarized by the following statement of errors claimed by the tenant.

1. The United States of America was improper party plaintiff.

2. The written thirty days' notice was invalid.

3. The provisions of the District of Columbia Emergency Rent Act apply to defense housing.

4. Where the United States of America is party plaintiff, exclusive jurisdiction is vested in the District Court of the United States for the District of Columbia.

5. Defendant was denied due process of law.

I

Was United States of America Proper Party Plaintiff?

It is the tenant's position that the suit should not have been brought in the name of the United States because either the National Capital Housing Authority or the Federal Public Housing Administration was the proper party plaintiff. The basis of his position with respect to the National Capital Housing Authority as the proper party plaintiff is that such agency, formerly the Alley Dwelling Authority of the District of Columbia,[1] had taken over

[1] Code 1940, 5-101 et seq., as amended; see 11 Fed. Reg. 10111 (1946) et seq.

management and control of the Bellevue housing project under a so-called lease from the Federal Public Housing Administra-
46 tion, a constituent unit of the National Housing Agency, created by an executive order of the President as a consolidation of the various housing activities of the federal government.[2] The National Housing Agency in turn had taken over management and control of the project under authority of the President's executive order from the Navy Department, which constructed the project pursuant to power vested in it by Congress in 1940 for the purpose of providing housing for enlisted men of the Navy and Marine Corps and their families, field employees of the Navy, and workers with families engaged in essential national defense activities.[3] Defendant urges that as lessee of the property the National Capital Housing Authority is the agency authorized to receive rents from the tenants, and thus the suit should have been brought in its name. Defendant urges further that if the National Capital Housing Authority was not the proper party plaintiff the suit should in any event have been brought by the Federal Public Housing Administrator. He bases this position upon the fact that such administrator is the successor in interest of the Federal Works Administrator, and that under an amendment to the so-called Lanham Act Congress provided that "any proceedings for the recovery of possession of any property or project *developed* or *constructed* under this subchapter shall be brought by the Administrator in the courts of the States having jurisdiction of such causes and the laws of the States shall be applicable thereto."[4] (Italics supplied.)

We believe that the trial court correctly ruled that the United States was entitled to bring this action. It was stipulated that the project in question was not "*constructed*" under the provisions of the Lanham Act, and we believe it equally true that it was not "*developed*" under that act. It follows that the quoted amendment to the Lanham Act does not apply to recovery of possession of units of this project. Furthermore and more important, the National Capital Housing Authority, the National Housing Agency, and the Federal Public Housing Administration are all, so far as the subject matter of this action is concerned, direct instrumentalities or agencies of the United States, and it has been uni-
47 formly held that the United States may bring suit in its own name to enforce rights of any of its departments, bureaus,

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[2] Exec. Order No. 9070, Feb. 24, 1942, 7 Fed. Reg. 1529.

[3] Section 201, Second Supplemental National Defense Appropriation Act (1941), 54 Stat. 883.

[4] 42 U. S. C. A. § 1522.

or corporations regardless of the name by which they are known.[5] Here title to the property in question was vested in the United States; all of the funds for the construction of the project came from the federal treasury; under the so-called lease under which the National Capital Housing Authority manages the property all proceeds from rentals go into the federal treasury; the National Capital Housing Authority, the National Housing Agency, and the Federal Public Housing Administration were created by the United States for the purpose of carrying out governmental functions. Regardless, therefore, of whether either of the named agencies could have filed the suit, we conclude that the right of the United States to sue in its own name is altogether clear.

II

Validity of the Thirty Days' Notice

Defendant's position with respect to the thirty days' notice is closely related to his contention regarding the proper party plaintiff. The notice to quit relied upon by the government as terminating the tenancy was written on a letterhead of the National Capital Housing Authority and signed by the property manager of the project. D. C. Code 1940, 45-902, provides that a tenancy from month to month may be terminated by a thirty days' notice in writing "from the landlord to the tenant." Defendant urges that if the United States is the landlord and entitled to file the suit then it follows that the notice to quit should also have been given by the United States and that since it was in fact given by a representative of the National Capital Housing Authority it was insufficient to terminate the tenancy. However, as we have pointed out above, this project is owned by the United States and, as has been said in connection with another agency, the National Capital
48 Housing Authority is "plainly one of the many administrative units of the United States Government, established to carry out the functions delegated to it by Congress. * * * In short, it is an integral part of the governmental mechanism. And the use of a name other than that of the United States cannot

[5] *United States* v. *Summerlin*, 310 U. S. 414; *Erickson* v. *United States*, 264 U. S. 246; *North Dakota-Montana Wheat Growers' Ass'n* v. *United States*, 8 Cir., 66 F. 2d 573, cert. denied 291 U. S. 672; *United States* v. *Czarnikow-Rionda Co.*, 2 Cir., 40 F. 2d 214, cert. denied 282 U. S. 844; *Russell Wheel & Foundry Co.* v. *United States*, 6 Cir., 31 F. 2d 826; cf. *Department of Agriculture* v. *Remund*, decided Mar. 17, 1947, 91 L. Ed. Adv. Op. 780; *Cherry Cotton Mills, Inc.*, v. *United States*, 327 U. S. 536; *Herren* v. *Farm Security Administration*, 8 Cir., 153 F. 2d 76.

change that fact."[6] The government, obviously, can act only through agents. It follows that the notice to quit was given by the landlord and therefore complied fully with the statutory requirement.

III

Do the Provisions of the District of Columbia Emergency Rent Act Apply to This Project?

Defendant's principal contention is that the District of Columbia Emergency Rent Act[7] applies by its explicit terms to all landlords and all tenants of all housing accommodations (as distinguished from commercial property) in the District of Columbia and hence that Bellevue Houses is embraced within its terms. That act, which under present law will remain in effect until March 1948, provides that rents may not be increased without the prior approval of the Rent Administrator. It also provides in Section 45-1605(b) that "No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant * * * so long as the tenant continues to pay the rent to which the landlord is entitled" unless certain enumerated conditions exist, such as that the landlord desires possession for his own use and occupancy or the tenant has violated an obligation of his tenancy. Admittedly, none of these enumerated conditions existed in this case nor are any of them alleged in the complaint. The issue is clear, therefore, that if the provisions of the Rent Act apply to this housing project then the government has failed to establish a case to dispossess the tenant. It follows equally that if the Rent Act does not apply the government is entitled to possession because under the general law of the District of Columbia a tenancy
49 from month to month may be terminated by giving a thirty days' notice to quit.

We have concluded that the District of Columbia Emergency Rent Act does not apply to this housing project, and hence that the government was entitled to bring this suit without alleging any of the grounds for possession provided for under that act. While the Rent Act by its terms applies to all landlords, the United States is not mentioned specifically and "There is an old and well-known rule that statutes which in general terms divest pre-existing rights

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[6] *Department of Agriculture* v. *Remund*, decided Mar. 17, 1947, 91 L. Ed. Adv. Op. 780, 782.

[7] Code 1940 (Supp. V), 45-1601 et seq.

or privileges will not be applied to the sovereign without express words to that effect."[8]

Furthermore, there are such conflicts between the local Rent Act and the statutes authorizing the construction and operation of the houses in this particular project as to strengthen our conviction that Congress did not intend the local Rent Act to apply to the project. For example, by the terms of the Second Supplemental National Defense Appropriation Act, 1941, *supra*, occupancy of these houses was limited to Navy personnel with families and Navy employees with families. Thus if a tenant ceases to be the head of a family or ceases to work in a Naval establishment, he is no longer eligible under the law to continue occupancy of such premises, but such change of status would not be a reason for eviction under the District Rent Act. Similarly, the District Rent Administrator is restricted as to the reason for which he may grant rent increases, but under the acts of Congress creating federal housing such restrictions do not apply. It is significant, we think, that by the Emergency Price Control Act,[9] under which rents and eviction practices for defense areas outside of the District of Columbia were regulated until recently, the National Rent Administrator made regulations under which federal housing accommodations rented to Army or Navy personnel, including civilian employees of the War and Navy Departments, were made subject to rent schedules specified by those departments.[10] It is not contended that the local rent administrator was granted such authority. Throughout the war emergency
50 the local rent administrator has acquiesced in the regulation of rents and eviction practices by the federal authorities in federal government housing in the District of Columbia and such administrative construction of the law, while not binding on the courts, merits some consideration. It appears clear, therefore, that the United States was entitled to bring this suit without regard to the provisions of the local Rent Act.

IV

Since the United States Is the Party Plaintiff, Was Exclusive Jurisdiciton Vested in the District Court of the United States for the District of Columbia?

Defendant urges that since the United States Government is the party plaintiff in the present suit the United States District Court

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[8] *United States* v. *United Mine Workers of America*, decided Mar. 6, 1947, 91 L. Ed. Adv. Op. 595, 604, and cases cited therein.

[9] 50 U. S. C. A. Appendix 902(b)(c)(d).

[10] Rent Regulation for Housing, Oct. 31, 1945, Section 6(c)(2), 10 Fed. Reg. 13528, 13534.

for the District of Columbia had exclusive jurisdiction, and hence that the Municipal Court was without jurisdiction. A similar contention was raised before us in *Ridgley v. United States*, 45 A. 2d 475, 73 W. L. R. 1069, and decided contrary to tenant's position. The tenant has advanced no new arguments on the point and therefore we adhere to our previous position.

V

Due Process of Law

Defendant urges that he was deprived of due process of law in that Landlord and Tenant rule 13 of the Municipal Court, providing that the complaint and summons in Landlord and Tenant actions shall be in the form specified in the rule, was not complied with. Included in that form is space for showing grounds for possession under the Rent Act. The amended complaint in the present action gave no reasons under the Rent Act for dispossessing the tenant. Since, as already indicated, we hold that the Rent Act does not apply to the present suit, it is obvious that it was not necessary to allege grounds for possession under that act. The complaint contained all necessary allegations under the applicable statute.

51

Since we conclude that the trial court correctly decided each of the issues involved, it results that the judgment below must be

Affirmed.

52 THE MUNICIPAL COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA

No. 532

October Term, 1946

REGINALD P. WITTEK, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE

JUDGMENT—September 10, 1947

Appeal from the Municipal Court for the District of Columbia, Civil Division. This cause came on to be heard on the transcript of record from the Municipal Court for the District of Columbia, and was argued by counsel. On consideration whereof, it is hereby ordered and adjudged by this Court that the judgment of the said Municipal Court, in this cause, be and the same is hereby affirmed.

BRICE CLAGETT,
Associate Judge.

September 10, 1947.

53-54 UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA

No. 9646

January Term, 1948

Municipal Court of Appeals No. 532

REGINALD P. WITTEK, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDANT

Before: CLARK, WILBUR K. MILLER and PRETTYMAN, *JJ.*

ORDER ALLOWING APPEAL—January 16, 1948

On consideration of the petition for allowance of an appeal from the judgment of the Municipal Court of Appeals for the District of Columbia entered herein September 10, 1947, and of the briefs of the parties on said petition, It is

Ordered by this Court that an appeal from said judgment be, and it is hereby, allowed, limited to the questions (1) whether the conditions imposed by the District of Columbia Emergency Rent Act on suits for possession apply where such a suit is brought by the United States as landlord, and (2) whether the Municipal Court has jurisdiction of civil suits brought by the United States in which the amount claimed does not exceed $3,000.00 or whether the District Court has exclusive jurisdiction over all civil suits brought by the United States in the District of Columbia.

Per Curiam.

Dated January 16, 1948.

55 UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

No. 9646

REGINALD P. WITTEK, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the Municipal Court of Appeals for the District of Columbia

Argued June 10, 1948

OPINION—September 27, 1948

Mr. Ward B. McCarthy for appellant.

Mr. Floyd L. France, Attorney, Department of Justice, with whom Messrs. Roger P. Marquis, Frederick William Smith and John F. Cotter, Attorneys, Department of Justice, were on the brief, for appellee.

Before Edgerton, Clark and Prettyman, JJ.

PRETTYMAN, J.:

The United States brought an action in the Landlord and Tenant Branch of the Municipal Court of the District of Columbia to evict appellant upon his refusal to vacate a house in a defense housing project after his tenancy had been terminated by a duly given thirty days' notice. The notice was consequent to appellant's refusal to pay an increase in monthly rent from $38.20 to $43.00. The project was owned by the United States and managed by the National Housing Authority through its lessee, the National Capital Housing Authority. The rent was increased by an administrative determination of the latter Authority and without reference to the District of Columbia Emergency Rent Act.[1] After some

[1] Act of Dec. 2, 1941, 55 Stat. 788, D. C. Code, tit. 45, §§ 1601-1611 (Supp. V).

preliminary proceedings,[2] the trial court entered judgment for the United States. The Municipal Court of Appeals for the District of Columbia affirmed.[3] We allowed an appeal to this court for purposes of a limited review. Two questions are to be decided:

1. Whether the Municipal Court has jurisdiction of civil suits brought by the United States seeking recovery of possession of real property situated within the District of Columbia; and

56 2. Whether the conditions imposed by the District of Columbia Emergency Rent Act on suits for possession apply where such a suit is brought by the United States as landlord.[4]

1. The Municipal Court clearly had jurisdiction of the action. The statute gives that court, as presently constituted, the jurisdiction which the Municipal Court theretofore had,[5] and such jurisdiction included actions to recover possession of real estate when a tenancy is terminated and the tenant, after notice, refuses to surrender possession.[6]

The contrary argument is that the District of Columbia Code gives the District Court of the United States for the District of Columbia jurisdiction over all civil actions in which the United States is plaintiff.[7] But that provision does not purport to confer exclusive jurisdiction, and it is in fact not different in substance from the clause of the United States Code which confers jurisdiction

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[2] United States v. Wittek, 48 A. 2d 805 (Mun. Ct. App. D. C. 1946).

[3] Wittek v. United States, 75 Wash. Law Rep. 982 (1947).

[4] In its order permitting this appeal, this court framed the first of the above two questions as follows: "Whether the Municipal Court has jurisdiction of civil suits brought by the United States in which the amount claimed does not exceed $3,000.00, or whether the District Court has exclusive jurisdiction over all civil suits brought by the United States in the District of Columbia." Later examination shows that monetary limitations on the jurisdictions of the local courts are not before us by the facts of the case *sub judice*. This appeal was briefed and argued on the basis of the original question. However, no prejudice to either party results in this particular instance, since the core of either question is the effect of the statute (see note 7 *infra*) which confers upon the District Court jurisdiction in civil cases in which the United States is plaintiff. That key question was thoroughly briefed and argued.

[5] Act of Apr. 1, 1942, 56 Stat. 192, D. C. Code § 11-755 (Supp. V).

[6] 31 Stat. 1193, 1382 (1901), as amended, 35 Stat. 623 (1909), 41 Stat. 555 (1920), D. C. Code §§ 11-735-37 and 45-910 (1940).

[7] 19 Stat. 253 (1877), D. C. Code § 11-306 (1940).

upon all District Courts of the United States in "all suits of a civil nature . . . brought by the United States".[8] It has long been established that this latter provision does not prevent the United States from appearing as party plaintiff in the local courts of a State.[9] If it may so appear despite the provision of the United States Code, we see no reason why it may not so appear in the local courts of the District of Columbia despite the almost identical provision of the District Code.

2. We think that the District of Columbia Emergency Rent Act applies to the United States as a landlord so as to bar this instant action. The Act itself says that it applies to "any landlord".[10] Whether such general language as "person" in a statute (or, as here, "landlord") includes the United States, is a matter of
57 context and statutory purpose—the "legislative environment".[11] The cause and the objective of the Rent Act are too well known to merit extensive elaboration. The impact of the defense program, with its concentration of workers in certain areas, created a shortage of housing which threatened to throw rents into an upward spiral, with consequent effects upon the cost of living and an impulse toward inflation. Congress acted in rigid and unmistakable fashion. It froze rents as of a fixed pre-war date.[12] It declared its purposes in a long opening section of the statute.[13] It defined "landlord" and "person" in broad terms.[14] This Act

[8] 36 Stat. 1091 (1911), as amended, 28 U. S. C. A. § 41(1) (Supp. 1947).

[9] Cotton v. United States, 11 How. 229, 13 L. Ed. 675 (1850); United States v. Bank of New York Co., 296 U. S. 463, 80 L. Ed. 331, 56 S. Ct. 343 (1936).

[10] D. C. Code § 45-1605(b) (Supp. V):

"No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant : . . so long as the tenant continues to pay the rent to which the landlord is entitled, unless—

"(1) The tenant is (a) violating an obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or any regulation or order thereunder applicable to the housing accommodations involved . . .)"

[11] Georgia v. Evans, 316 U. S. 159, 161, 86 L. Ed. 1346, 62 S. Ct. 972 (1942); United States v. Cooper Corp., 312 U. S. 600, 85 L. Ed. 1071, 61 S. Ct. 742 (1941); Ohio v. Helvering, 292 U. S. 360, 370, 78 L. Ed. 1307, 54 S. Ct. 725 (1934).

[12] D. C. Code § 45-1602 (Supp. V).

[13] D. C. Code § 45-1601 (Supp. V).

[14] D. C. Code § 45-1611(g) and (h) (Supp. V).

was not passed for the purpose of regulating the relationships between landlord and tenant, or even for a mere regulation of rents that they might be fair and reasonable. Its purpose was to prevent practices tending to increase the cost of living. Deviations from its rigid fixations were permitted only upon proof of "peculiar circumstances", substantial changes in taxes or other maintenance or operating costs, or substantial capital improvements.[15]

At about the same time, Congress enacted a somewhat similar statute for the nation, including maximum rents for defense-area housing accommodations.[16] That Act specifically provided that the term "person" as used therein included "the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of the foregoing".[17] Thus, so far as the national Act is concerned, there is no doubt that the United States is a landlord, and if the housing accommodations here involved had been in any defense area in the United States except in the District of Columbia, this landlord could not have raised these rents by mere administrative determination outside the processes of the statute.

Of course, the argument can be made that since Congress specifically named the United States as a "person" in the national Act but did not do so in the local Act, it meant to include the United States in the former but not in the latter. If there be any rationale to such a distinction, we fail to perceive it, and we are not inclined to give weight to a theoretical inference of that sort when we are dealing with a problem of the scope of price-and-rent control and the purpose of Congress is so crystal clear. Interpreting "person" in this statute in accordance with that purpose, as the rules of construction say we should, we think it includes any and every landlord, even the United States. Raising the rents of Government housing is just as much an increase in the cost of living as raising the rents in any other housing project. This is a matter of public interest and not a matter of landlords' rights, sovereign or otherwise. We are inclined to think that the specific contingency of Government ownership of housing accommodations did not
58 occur to the members of Congress in relation to the local Act, which passed about two months before the national Act was adopted, but that it was noted in the course of the latter consideration and the intention of Congress in respect to the subject was then and there made clear.

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[15] D. C. Code § 45-1604 (Supp. V).

[16] Sec. 2(b) of the Emergency Price Control Act of 1942, 56 Stat. 25, as amended, 59 Stat. 306 (1945), 60 Stat. 671 (1946), 50 U. S. C. A. App. § 902(b) (Supp. 1947).

[17] Sec. 302(h) of the Act, 56 Stat. 37, 50 U. S. C. A. App. § 942(h).

The United States makes this argument:

> "A mere reading of the above [the statutory declaration of purposes] shows that Congress did not have the United States in mind in enacting the Emergency Rent Act, since it could not have had in contemplation that the United States was an owner who would engage in 'profiteering and other speculative and manipulative practices.'"

Of course, Congress did not "have in mind" any particular landlord. What interests us in the argument is that this landlord, attempting to raise its rents by 12½ per cent, says that the statute does not prevent it from doing so, since Congress could not have thought that it would attempt to do so. The potential ramifications of such a rule of statutory construction are fascinating to contemplate. And, obviously, the true premise to the Government's conclusion must be the opposite of that which it states in that argument *i.e.*, the premise must be that Congress must have had in mind that the Government would raise its rents and intended that it should be permitted to do so.

We are presented with the argument that since this housing project was itself a defense project, intended for defense workers, any restriction upon control of its rents would impede the national defense program and thus violate one of the stated purposes of the Rent Act. The answer is, as we have already said, that the Rent Act does not purport to regulate the relationship of landlord and tenant, but merely fixes the rent ceiling, and in that fixation the protection of defense workers was a primary concern.

There is some argument that this project was a "Lanham Act" project and that the rents were placed by that statute in the control of the Federal Works Administrator,[18] and that, therefore, the Rent Act could not apply. Without entering upon the labyrinth of transfers through which this property passed, and from which we would have to conclude whether or not it was governed by the Lanham Act, we think the answer to the problem is in that provision of the Emergency Price Control Act which specifically subjects the United States to its provisions, including its rent control provisions. The amendment to the Lanham Act was enacted on January 21, 1942, and the Emergency Price Control Act on January 30, 1942. It seems clear that whatever authority the Housing Administrator and the War and Navy Departments had to fix initial rents and to control other features of the rentals, they were still subject to the rent control provisions of the Price Act when it came to raising rents.

[18] Sec. 7 (Later renumbered "304") of the Act of Oct. 14, 1940, 54 Stat. 1127, as amended by Act of Jan. 21, 1942, 56 Stat. 12, 42 U. S. C. A. § 1544.

That fact answers the argument here made that "Lanham Act" property was not subject to rent control by any authority other than the Housing Administrator.

We cannot refrain from commenting upon the curious spectacle of one agency of the Government, the National Capital Housing
59 Authority, asserting a right to violate a principle so insistently and emphatically proclaimed by the rest of the Government as essential to the public welfare. This Authority acts by and on behalf of its principal, the United States, and so must be treated as though it were in fact the whole of the executive branch of Government. But strong evidence would have to be presented to convince us that it was within the intent of Congress that while no other landlord could imperil the economic status of tenants in the District of Columbia, nevertheless the United States, in its capacity as landlord of defense housing, could raise its rents by the unimpeded administrative determination of this lessee Authority.

Appellee relies principally upon *United States* v. *Mine Workers*[19] for the proposition that a statute does not apply to the United States unless it expressly says so. This is a familiar and well-established rule, but it is subject to the other rule which we have discussed above, that where the statute applies to "persons" and defines "person" in the broadest terms, the inclusion *vel non* of the United States is a matter of "legislative environment". We think that to be the rationale of the opinion in the *Mine Workers* case. The Court did not rest upon the stated rule as absolute, but said, ". . . we are inclined to give it much weight here" and "But we need not place entire reliance on this exclusionary rule."[20] It went on to examine the full text of the statute, its purposes, and its legislative history. It found clauses which "affirmatively suggest that the United States, as an employer, was not meant to be included."[21] Upon the whole of that consideration, it reached its conclusion. The same sort of process in the case at bar leads to the opposite result.

We do not have here the problem with which the Second Circuit Court of Appeals dealt in *United States* v. *Weisenbloom*.[22] The question there was whether the United States was subject to a New York State statute. The power of the State to regulate activities of the Federal Government was a primary concern, and in view of the grave doubt upon that question, the court construed the statute as not including the United States. No question of power is involved

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[19] 330 U. S. 258, 272-3, 91 L. Ed. 595, 67 S. Ct. 677 (1947).

[20] *Id.* at 273.

[21] *Id.* at 275.

[22] Decided June 7, 1948.

in the present case, as the local Rent Act was an act of Congress which had ample power in the matter.

The case will be remanded to the Municipal Court of Appeals with instructions to enter orders in accordance with this opinion.

Remanded with instructions.

EDGERTON, J., concurs in the result.

60 UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 9646, April Term, 1948

REGINALD P. WITTEK, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the Municipal Court of Appeals for the District of Columbia.

Before: EDGERTON, CLARK and PRETTYMAN, JJ.

JUDGMENT—September 27, 1948

This cause came on to be heard on the transcript of the record from the Municipal Court of Appeals for the District of Columbia, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said Municipal Court of Appeals on appeal in this cause be, and it is hereby, reversed, and that this case be, and it is hereby, remanded to the said Municipal Court of Appeals with instructions to enter orders in accordance with the opinion of this Court.

Per Circuit Judge PRETTYMAN.

Dated September 27, 1948.

Circuit Judge EDGERTON concurs in the result.

61 UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

No. 9646

REGINALD P. WITTEK, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

PHILIP B. PERLMAN,
Solicitor General.

Receipt of copy hereof this 10 day of December, 1948, is hereby acknowledged.

WARD B. MCCARTHY,
Attorney for Reginald P. Wittek.

62 UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, formerly United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 61, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties, and the proceedings of the said Court of Appeals as designated by counsel in the case of: Reginald P. Wittek, Appellant, vs. United States of America, Appellee, No. 9646, October Term, 1948, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 15th day of December, A. D. 1948.

JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia Circuit. (Seal.)

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Supreme Court of the United States

No. 473—October Term, 1948

Order allowing certiorari—Filed March 14, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.